

Exhibit 6

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

WAYMO LLC

Plaintiff,

vs.

Case No.

UBER TECHNOLOGIES, INC.; 17-cv-00939-WHA

OTTOMOTTO, LLC; OTTO

TRUCKING LLC,

Defendants.

VIDEOTAPED DEPOSITION OF EMIL MICHAEL

San Francisco, California

Friday, July 28, 2017

Volume I

REPORTED BY:

REBECCA L. ROMANO, RPR, CSR No. 12546

JOB NO. 2666869

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1 MS. RAY: Object. 09:45:04

2 I'm going to instruct you not to answer
3 on attorney-client privileged grounds --

4 THE DEPONENT: Yeah.

5 MS. RAY: Because the board discussion is 09:45:09
6 privileged in the context of privilege.

7 Q. (By Mr. Perlson) In the meeting in which
8 you were consulted in the decision to fire
9 Mr. Levandowski, were their attorneys present?

10 A. Yes. 09:45:35

11 Q. Who -- who were they?

12 A. The general counsel and outside company
13 counsel.

14 Q. Okay. And does Uber's general counsel
15 attend the board meetings, generally? 09:45:55

16 A. Yes.

17 Q. And is Uber's general counsel in those
18 meetings for only part or most of them, usually?

19 MS. RAY: Objection. Form.

20 THE DEPONENT: She's in for the whole 09:46:17
21 time.

22 Q. (By Mr. Perlson) And that's generally
23 true for every board meeting that you have been
24 involved in?

25 A. Yes. 09:46:23

1 Q. And in this conversation which you -- you 09:46:31
2 were -- in this meeting in which you were consulted
3 in relation to the firing of Mr. Levandowski, you
4 mentioned that there was outside counsel present.

5 Do you recall who that outside counsel 09:46:43
6 was?

7 A. Gordy Davidson from Fenwick & West.

8 Q. And what's his role?

9 A. He's the company's primary outside
10 counsel. 09:46:55

11 Q. And were there any other outside counsel?

12 A. Not that I recall, no.

13 Q. And what is Mr. -- and so, I'm sorry,
14 it's Gordy Davis, you said?

15 A. Davidson. Davidson. 09:47:21

16 Q. Davidson.

17 A. Yes.

18 Q. And does Mr. Davidson generally sit in on
19 board meetings as well?

20 A. He -- 09:47:27

21 MS. RAY: Objection. Form.

22 THE DEPONENT: He's generally present,
23 yes.

24 Q. (By Mr. Perlson) In the same manner that
25 the general counsel is? 09:47:34

1 MS. RAY: Objection to form. 09:47:36

2 THE DEPONENT: I mean, under the same
3 form. I don't know how to answer that. But -- but
4 he's -- he's there physically, yes --

5 Q. (By Mr. Perlson) Right. 09:47:44

6 A. -- for the same amount of time. Okay.

7 Q. That's what I meant.

8 MR. PERLSON: So given what we've just
9 heard, are you going to stand by your instruction
10 that he can't answer this question? 09:47:56

11 MS. RAY: I believe it was an
12 attorney-client privileged context. If you want to
13 let us take a break so I can discuss the context of
14 the meeting further with Mr. Michael, to confirm,
15 I'm happy to do that. 09:48:05

16 MR. PERLSON: Sure.

17 MS. RAY: Let's go off the record.

18 THE VIDEOGRAPHER: We are off the record
19 at 9:48 a.m.

20 (Recess taken.) 09:48:26

21 THE VIDEOGRAPHER: We are back on the
22 record at 9:51 a.m.

23 MR. PERLSON: I think before the break I
24 had asked whether you wanted to stand by your
25 instruction. 09:52:09

1 MS. RAY: So I stand by the instruction. 09:52:10
2 You are welcome to ask him if it was in the context
3 of the giving and receiving of legal advice and
4 whether it was in anticipation of litigation to
5 confirm those facts, if you want. But we are going 09:52:18
6 to stand on those objections.

7 Q. (By Mr. Perlson) Who did you provide
8 your input to regarding the termination of
9 Mr. Levandowski?

10 MS. RAY: Hold on. 09:52:44
11 Objection. Form.

12 THE DEPONENT: In that meeting, I said I
13 provided --

14 MS. RAY: Wait. I just don't want you to
15 say what you said. You can answer the question 09:53:01
16 with who --

17 THE DEPONENT: Yeah.

18 MS. RAY: -- if any --

19 THE DEPONENT: The members of that --
20 people who were in that meeting, generally. 09:53:08

21 Q. (By Mr. Perlson) Were -- were you
22 talking to the board or were you talking to the
23 attorneys?

24 MS. TOUGH: Objection. Form.

25 MS. RAY: Objection. Form. 09:53:22

1 THE DEPONENT: Attorneys were leading the 09:53:25
2 discussions, so the discussion was with them.

3 Q. (By Mr. Perlson) So it came up in the
4 context of a discussion that was being led by
5 attorneys? 09:53:36

6 A. Yes.

7 Q. How long did that discussion last?

8 A. My recollection is about 60 minutes.

9 Q. Six-zero?

10 A. Yes. 09:53:58

11 Q. Do you recall discussing the termination
12 of Mr. Levandowski outside of that 60-minute
13 meeting?

14 A. Yes.

15 Q. With whom? 09:54:33

16 A. With -- with various board members.

17 Q. And which board members?

18 A. David Bonderman and Bill Gurley.

19 Q. When did you discuss that with
20 Mr. Bonderman? 09:55:03

21 A. I don't remember exactly, but in and
22 around that time.

23 Q. In and around the same time as that other
24 board meeting.

25 A. Yes. 09:55:13

1 Q. And what -- tell me what you remember 09:55:13
2 about your discussions with Mr. Bonderman?

3 MS. RAY: Wait. I'm going to instruct
4 you not to answer to the extent that your
5 discussions reveal attorney-client privileged 09:55:21
6 communications.

7 THE DEPONENT: Yes, there was the --
8 primarily, the discussion was about what the
9 lawyers were advising David, as a board member,
10 about the -- about the Levandowski situation. 09:55:33

11 Q. (By Mr. Perlson) Okay. Well, what did
12 he say?

13 MS. RAY: Objection.

14 I instruct you not to answer about the
15 contents of what the lawyers conveyed in the 09:55:44
16 attorney-client privileged context.

17 MR. PERLSON: I'm just asking what they
18 were talking about.

19 MS. RAY: I just want to make sure he
20 doesn't reveal privileged information. 09:55:53

21 Otherwise, if it's nonprivileged, you can
22 answer.

23 THE DEPONENT: Uh-huh. We were
24 discussing what the -- what the legal opinions were
25 about, what our actions ought to be regarding the 09:56:02

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1 Levandowski situation. So I do think it was 09:56:06
2 privileged.

3 Q. (By Mr. Perlson) Well, what did --
4 did -- did -- did you discuss whether you agreed or
5 disagreed with the recommendations that were being 09:56:20
6 provided by the attorneys?

7 MS. RAY: Wait. Hold on.

8 You can answer "yes" or "no."

9 THE DEPONENT: So can I see the question
10 again. I'm sorry. 09:56:44

11 MS. RAY: But you can't answer what the
12 recommendation was. I don't want you to -- I don't
13 want you to reveal what any of the attorney-client
14 privileged communication was.

15 THE DEPONENT: Actually, at this point I 09:56:58
16 was kind of taking the information in as opposed to
17 expressing my opinion.

18 Q. (By Mr. Perlson) Okay. And is it your
19 testimony that you -- your conversation with
20 Mr. Bonderman consisted of nothing other than 09:57:14
21 repeating back to each other what the lawyers had
22 told you?

23 MS. TOUGH: Objection to the form of the
24 question.

25 MS. RAY: Join. 09:57:27

1 THE DEPONENT: It -- it was him telling 09:57:28
2 me what his opinion -- his -- the legal opinion was
3 and how strongly he felt and how he agreed with it.

4 Q. (By Mr. Perlson) Okay. Well -- well,
5 why -- he said he -- what was it that he felt 09:57:38
6 strongly about?

7 MS. RAY: Objection.

8 I instruct you not to answer to the
9 extent it gets into any revelation of
10 attorney-client privileged information. 09:57:55

11 So you've testified he agreed. If
12 further information would reveal the contents of
13 privileged discussions, you should go no further.
14 If there's further nonprivileged information, you
15 can give that. 09:58:05

16 THE DEPONENT: Okay. I mean, I think it
17 was -- it was privileged information that he was
18 trying to convey.

19 Q. (By Mr. Perlson) But --

20 A. Convey an opinion on. 09:58:15

21 Q. But he was -- but you were in the same
22 board meeting in which the lawyers were conveying
23 their recommendation, right?

24 A. Yes.

25 Q. So he didn't -- you didn't need him to 09:58:25

1 repeat to you what the lawyers had said in a 09:58:27
2 meeting that you were also in.

3 MS. RAY: Objection. Form.

4 THE DEPONENT: I didn't need him to
5 repeat it. He might have been doing it for 09:58:40
6 emphasis.

7 Q. (By Mr. Perlson) So what -- did -- did
8 you two reach some agreement as to what needed to
9 be done in relation to Mr. Levandowski?

10 A. No. 09:58:54

11 MS. RAY: Object -- wait.

12 Q. (By Mr. Perlson) Did you have any
13 disagreement on that subject?

14 MS. RAY: Objection.

15 Can you just hold on and let me object. 09:59:00

16 So you can answer "yes" or "no."

17 MS. TOUGH: It's, did you have any
18 disagreement on the subject with Mr. Bonderman?

19 THE DEPONENT: We had neither
20 disagreement nor agreement. 09:59:18

21 Q. (By Mr. Perlson) Okay. Well, what --
22 what -- what do you recall saying to Mr. Bonderman
23 in that discussion?

24 MS. RAY: Objection.

25 Instruct you not to answer to the extent 09:59:30

1 it reveals any attorney-client privileged 09:59:31
2 information.

3 And to the extent you're having this
4 discussion at the direction of lawyers, you know,
5 keep that in mind, too. 09:59:42

6 So you should only reveal anything that's
7 not privileged.

8 THE DEPONENT: I was just listening.

9 Q. (By Mr. Perlson) You didn't say
10 anything? 09:59:50

11 A. Not of substance.

12 Q. Did Mr. Bonderman say anything to you
13 that wasn't repeating what the lawyers had -- had
14 said?

15 A. Not substantively, no. 10:00:08

16 Q. And how long did that discussion last?

17 A. A few minutes.

18 Q. The -- okay. So you said that you had
19 also discussed the termination of Mr. Levandowski
20 with Mr. Gurley. 10:00:27

21 When did that happen?

22 A. Same time frame.

23 Q. And what did you discuss with Mr. Gurley?

24 MS. RAY: Objection.

25 I instruct you not to answer to the 10:00:38

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1 extent it discloses any attorney-client privileged 10:00:39
2 information. You may otherwise answer.

3 THE DEPONENT: We would discuss his --
4 his -- his interpretation or his sort of the
5 conveyance of what the legal advice was he was 10:00:51
6 getting.

7 Q. (By Mr. Perlson) Well, you started to
8 say what his interpretation was.

9 What did you mean by that?

10 MS. RAY: You can answer without 10:00:59
11 revealing any attorney-client privileged
12 information, so without revealing the specifics of
13 what he told you about the attorney information.

14 THE DEPONENT: Just his agreement with
15 the attorneys' recommendations. 10:01:12

16 Q. (By Mr. Perlson) Did you talk about
17 anything else?

18 A. Similar-type conversation as with
19 Bonderman.

20 Q. How long was the conversation? 10:01:23

21 A. A few minutes.

22 MR. PERLSON: I'll just state for the
23 record and move on that I don't think it's
24 appropriate for me to be shut off from asking
25 questions about two nonlawyers talking about their 10:01:42

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1 view of -- of -- of what happened in a -- in a 10:01:46
2 board meeting, but we can deal with that later if
3 we need to.

4 Q. (By Mr. Perlson) Other than the
5 conversation with Mr. Bonderman and Mr. Gurley, 10:02:02
6 were there -- did you discuss with anyone else the
7 termination of Mr. Levandowski, other than that
8 other board meeting?

9 A. Not that I recall.

10 Q. Did you ever discuss it with 10:02:20
11 Mr. Kalanick?

12 A. Only with -- with counsel around.

13 Q. Did you agree with the decision to
14 terminate Mr. Levandowski?

15 A. Ultimately, yes. 10:02:42

16 Q. Why?

17 A. Because of the -- I thought it was -- I
18 thought that -- I think that it was hurting the
19 company.

20 Q. And how was it hurting the company? 10:03:23

21 A. Well, the judge in the case is -- was,
22 clearly in his rulings, making it clear that --
23 that this was a move that had to get made.

24 That was hurting our public perception.

25 It was hurting Travis' stature in the company with 10:03:37

1 the board. 10:03:41

2 Q. How was it hurting the public perception?

3 A. Well, when the judge refers to -- refers
4 it to the U.S. attorney and does those things to
5 ensure that -- that Anthony is not part of certain 10:03:57
6 technology efforts in the company, it's sort of
7 obvious.

8 Q. And how was Travis' -- I'm sorry.

9 How was -- why was Mr. Levandowski
10 hurting Mr. Kalanick's stature in the company with 10:04:32
11 the board?

12 MS. TOUGH: Objection to the form of the
13 question.

14 THE DEPONENT: Just that it was -- it had
15 been a long time since it had been proposed that, 10:04:47
16 you know, someone makes a move to get Anthony out
17 of the way for purposes of this technology
18 development, and it looked indecisive.

19 Q. (By Mr. Perlson) Oh, because someone on
20 the board had suggested that Levandowski get fired 10:05:10
21 long before he actually did?

22 MS. TOUGH: Objection to the form of the
23 question.

24 MS. RAY: Objection. Form.

25 And I also instruct you not to answer to 10:05:19

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1 the extent that you would be revealing any 10:05:20
2 attorney-client privileged information.

3 THE DEPONENT: No. Since the -- since
4 the judge had sort of, in his rulings, appeared to
5 be bearing down on ensuring that Anthony wasn't -- 10:05:31
6 was removed from this area.

7 Q. (By Mr. Perlson) What does that have to
8 do with Mr. Kalanick?

9 A. Well, he runs the company that this
10 lawsuit was against. 10:05:42

11 Q. Okay. And so the board thought that
12 Mr. Kalanick should do something about
13 Mr. Levandowski?

14 MS. TOUGH: Objection to the form of the
15 question. 10:05:53

16 THE DEPONENT: No. I was saying -- I
17 didn't say the board. I said the -- the perception
18 that -- from the rulings, that had seemed to
19 indicate that Anthony Levandowski should be removed
20 from this area, were a long time -- had been going 10:06:09
21 on for a while.

22 Q. (By Mr. Perlson) Okay. Well, the -- in
23 your answer -- previous answer, you had said, "That
24 was hurting our public perception. That was
25 hurting Travis' stature in the company with the 10:06:27

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1 board." 10:06:31

2 Was -- did -- was that a misstatement

3 or --

4 A. Stature with the board about decisiveness

5 and, you know, trying to take the guidance from the 10:06:40

6 judge.

7 Q. But what do you mean about -- so what was

8 said regarding the lack of decisiveness, that you

9 remember?

10 MS. TOUGH: Objection to the form of the 10:06:54

11 question.

12 THE DEPONENT: What was -- let me see.

13 What...

14 (Discussion off the stenographic record.)

15 THE DEPONENT: Nothing was said. It was 10:06:58

16 an impression that I had.

17 Q. (By Mr. Perlson) I see. That -- that

18 was an impression that you had based on statements

19 made by board members?

20 A. The statement based on -- it was my 10:07:26

21 impression based on what I was observing from a PR

22 standpoint, internally discussions all over the

23 place, that we were not making fast enough

24 decisions on this matter relative to what the judge

25 seemed to want. 10:07:45

1 Q. And was that a frustration that was 10:07:46
2 expressed by the board?

3 MS. RAY: Objection. I instruct you not
4 to answer to the extent that it would reveal
5 discussions in the context of the attorney-client 10:07:54
6 privilege and the context of any meetings where
7 there is giving and taking of legal advice.

8 THE DEPONENT: Uh-huh. Yeah, I shouldn't
9 answer then.

10 Q. (By Mr. Perlson) Okay. So you're taking 10:08:04
11 counsel's instruction not to answer that?

12 A. I am.

13 MR. PERLSON: That seems to be a quite
14 overly aggressive assertion of privilege. But,
15 once again, I guess we can deal with that later. 10:08:20

16 Q. (By Mr. Perlson) Do you recall any --
17 anyone on the board expressing frustration or
18 disappointment with how Mr. Kalanick handled the
19 acquisition of Otto?

20 MS. RAY: Objection. 10:08:55

21 You may answer to the extent that there
22 were discussions outside of the context of the
23 attorney-client privilege, outside of the giving
24 and taking of legal advice, but otherwise I
25 instruct you not to answer. 10:09:06

1 THE DEPONENT: I mean, the board approved 10:09:09
2 the deal.

3 Q. (By Mr. Perlson) Okay. But after the
4 lawsuit was -- was filed and the -- Waymo --
5 Waymo's allegations were made public, did the -- 10:09:26
6 the board -- anyone on the board, after that,
7 express frustration or disappointment with the way
8 that Mr. Kalanick had handled the Otto acquisition?

9 A. Not that I recall.

10 MS. RAY: Objection. Attorney-client 10:09:44
11 privilege.

12 I instruct you to answer only with
13 respect to discussions that were outside the
14 privileged context.

15 THE DEPONENT: Okay. Not that I recall. 10:09:51

16 Q. (By Mr. Perlson) Had -- did anyone on
17 the board request to see the due diligence report
18 that Stroz had prepared in connection with the Otto
19 acquisition?

20 MS. TOUGH: Objection to form. 10:10:22

21 MS. RAY: Objection. Form.

22 And you may answer outside the context of
23 attorney-client privileged discussions, but
24 otherwise I instruct you not to answer.

25 THE DEPONENT: I don't know. 10:10:33

1 Q. (By Mr. Perlson) Do you know whether 10:10:35
2 anyone on the board saw the due diligence report?

3 A. I don't know.

4 Q. Do you know what the due diligence report
5 is? 10:10:41

6 A. I don't know exactly what it is, no.

7 Q. Okay. You haven't seen it.

8 A. No.

9 Q. You haven't asked to see it.

10 A. No. 10:10:49

11 Q. When's the last conversation that you
12 personally have had with Mr. Levandowski?

13 A. We were working on a deal, before he was
14 terminated, to hire a scientist in Canada.

15 Q. So you had discussions with him in 10:11:53
16 relation to that?

17 A. Yes.

18 Q. Other than the conversation prompted from
19 the meeting in the hallway that we talked about
20 earlier, had you had any other conversations with 10:12:12
21 Mr. Levandowski regarding the allegations in this
22 case?

23 A. I don't think I have.

24 Q. Have you had discussions with
25 Mr. Kalanick regarding the allegations in this 10:12:29

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1 stack? 01:22:18

2 A. No.

3 Q. Do you recall it at all?

4 A. No.

5 Q. Were you at a board meeting where this 01:22:42

6 was presented?

7 A. I might have been. I just don't

8 remember.

9 Q. Okay. So you don't remember this Project

10 Zing Review being presented to the board one way or 01:22:54

11 the other?

12 A. I don't remember one way or the other.

13 Q. And you are not familiar at all with the

14 contents of the deck?

15 A. I am not. 01:23:05

16 (Exhibit 408 was marked for

17 identification by the court reporter and is

18 attached hereto.)

19 Q. (By Mr. Perlson) You have been handed

20 what's been marked as Exhibit 408, 101482 through 01:24:47

21 101498.

22 A. Right.

23 Q. So these are -- are minutes of a board of

24 directors meeting, April 11th, 2016?

25 A. Uh-huh. 01:25:03

1 Q. "Yes"? 01:25:03
2 A. Yes. Sorry.
3 Q. If you look in the second paragraph, you
4 are -- it indicates that you are an attendee by
5 telephone? 01:25:15
6 A. Yes.
7 Q. Does that refresh your recollection at
8 all as to whether you were at a board meeting where
9 this -- where this presentation was discussed?
10 A. Assuming this is correct, yeah. 01:25:26
11 Q. Okay. But does that make you remember
12 the meeting at all any more?
13 A. I mean, I can flip through this.
14 Q. Why don't you look at the minutes.
15 A. I mean, if I could see the non- -- the 01:26:10
16 redacted portions, I might have remembered it.
17 Q. Well, if you look in -- in, like, 101485,
18 there's -- there's proposed resolutions.
19 A. This is all about the Otto acquisition.
20 Q. You have been handed Exhibit 285, 01:27:45
21 agreement to plan a merger between Ottomotto and
22 others.
23 You ever -- did you ever see this -- this
24 agreement?
25 A. No. 01:27:59

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1 don't see how you can now be instructing him to 02:16:11
2 answer -- not to answer regarding what is disclosed
3 and not withheld as privileged?

4 MS. RAY: So let me clarify.

5 MR. PERLSON: Are you clawing this back 02:16:25
6 or?

7 MS. RAY: No, no.

8 You may answer with respect to the impact
9 on the company of -- you know, the impact of the
10 company of continuing to employ Mr. Levandowski, to 02:16:31
11 the extent you recall any discussions about that
12 impact, but I don't want you to get into legal
13 advice in that regard.

14 So I think there was already earlier
15 testimony on this point. 02:16:46

16 THE DEPONENT: Okay.

17 MS. RAY: I think it was about the same
18 discussion, so you can do as you did before.

19 THE DEPONENT: Okay. I mean, we
20 discussed the reputational impact to the company, 02:16:57
21 to Travis, and to what -- what signal that might
22 mean to the judge.

23 Q. (By Mr. Perlson) So this was in
24 reference to the discussion earlier in your
25 deposition where you had indicated that there was a 02:17:27

1 concern regarding the continuing employment of 02:17:33
2 Mr. Levandowski would have on the company itself
3 and Travis?

4 A. That's right.

5 Q. And did the board make any specific 02:17:51
6 decision regarding the continued employment of
7 Mr. Levandowski at this meeting?

8 A. I don't believe so, no.

9 Q. Was it ultimately the board that decided
10 to terminate Mr. Levandowski? 02:18:11

11 A. My recollection is that Mr. Levandowski
12 was given an -- a request to comply with the
13 company's request -- reasonable request for him
14 to -- to do something, and he didn't comply, so, in
15 that way, he chose, I guess, to not be employed. 02:18:38

16 Q. Do you have views on the size of the
17 autonomous vehicle market over the next five years?

18 A. Five years? I think it will be smaller
19 than the most optimistic experts think.

20 Q. How about in the next 10 or 15 years? 02:19:34

21 A. I think it will be probably bigger than
22 most experts think. It's going to just take
23 longer.

24 Q. You think it's going to take longer, but
25 eventually grow faster? 02:19:46

1 A. Yeah. 02:19:48

2 Q. Did Uber conduct any analysis on the size
3 of the autonomous vehicle market in connection with
4 its acquisition of Otto?

5 A. I don't recall, but that would be 02:20:06
6 standard practice.

7 Q. You weren't involved in any such --

8 A. No.

9 Q. Who would have been knowledgeable of
10 that? 02:20:16

11 A. Cameron.

12 Q. In connection with the Otto transaction,
13 did Uber analyze how much of its current business
14 could be supplanted by autonomous vehicles in
15 connection with the acquisition? 02:20:34

16 A. I don't know the answer to that.

17 Q. What was the state of Uber's autonomous
18 vehicle technology in December of 2015?

19 MS. RAY: Objection. Form.

20 THE DEPONENT: It was less than a year 02:20:55
21 old, so it was fairly young.

22 Q. (By Mr. Perlson) Do you know how many
23 miles had been driven?

24 A. I don't.

25 Q. Do you know how far away Uber was from a 02:21:06

1 THE VIDEOGRAPHER: This is the end of
2 today's deposition of Mr. Emil Michael. We are off
3 the record at 3:28 p.m. The total number of media
4 used was seven and will be retained by Veritext. 03:28:40
5 Thank you. 03:28:44
6 (TIME NOTED: 3:28 p.m.)
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11

12 EMIL MICHAEL
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